

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

IN RE:	§	
	§	
JOE JESSE MONGE and	§	
ROSANA ELENA MONGE,	§	CASE NO. 09-30881-lmc
	§	
Debtors.	§	
	§	
JOE JESSE MONGE and	§	CHAPTER 11
ROSANA ELENA MONGE,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	
	§	ADVERSARY NO. 10-3019
ALICIA ROJAS and FRANCISCO JAYME,	§	
	§	
Defendants.	§	

REQUEST FOR LEAVE TO FILE SUPPLEMENT
TO AMENDED ANSWER TO COMPLAINT AND COUNTERCLAIM

TO THE HONORABLE BANKRUPTCY JUDGE PRESIDING:

COME NOW ALICIA ROJAS and FRANCISCO JAYME (collectively "Defendant"), the Defendants and Counter-Plaintiffs herein, and file this their Request For Leave to File Supplement To their Amended Answer To Complaint and Counterclaim, and as grounds therefor would show:


1. Plaintiffs filed the above-captioned Adversary Proceeding on June 14, 2010 by filing their complaint.
2. Thereafter, on June 24, 2010, Plaintiffs filed an Amended Complaint. On July 13, 2010, Defendant filed its answer to the Amended Complaint along with a counterclaim. Thereafter, on August 10, 2010, Defendants filed their First Amended Answer and First Amended Counterclaim.
3. In the discovery that is proceeding in this adversary proceeding, it appears to have developed that Defendants may assert a claim that the property at issue in this cause is held by Plaintiffs in a resulting or constructive trust for the benefit of Defendants. Defendants therefore request leave of the Court to file their supplement to their first amended pleading in this adversary proceeding. A copy of this proposed supplemental pleading is attached hereto as Exhibit "A".
4. This matter is set for docket call for trial on 8/10/2011. No deadlines are approaching at this time. Discovery is proceeding and ends on 6/24/2011.
5. Plaintiffs will not be prejudiced by this supplement. Depositions are just now being scheduled and Plaintiffs therefore have ample time to investigate the assertions of the proposed supplemental pleading. Additionally, in Defendants' First Amended Answer and Counterclaim, Defendants

alleged that the transaction in which it appears that Plaintiffs purchased a house from Defendants was not a real sale, and that Defendants paid the downpayment and retained possession of the property. Plaintiffs therefore had notice of the facts underlying the supplemental pleading.

WHEREFORE, PREMISES CONSIDERED, Defendant requests that this Court allow them to file a supplement to Defendant's amended answer and counterclaim in the above-captioned adversary proceeding.

Respectfully submitted,

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Attorneys for Defendants, ALICIA JOJAS and
FRANCISCO JAYME

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was mailed via first class U.S. mail, postage prepaid, to the following parties the 1st day of March, 2011.

Plaintiff Attorney
Mr. Sidney J. Diamond
3800 North Mesa Street, Suite B-3
El Paso, Texas 79902

Plaintiffs
Joe and Rosana Monge
51 Sierra Crest Drive
El Paso, Texas 79902


LANE C. REEDMAN

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
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IN RE:

**JOE JESSE MONGE and
ROSANA ELENA MONGE,**

Debtors.

**JOE JESSE MONGE and
ROSANA ELENA MONGE,**

Plaintiffs,

V.

ALICIA ROJAS and FRANCISCO JAYME,

Defendants.

CASE NO. 09-30881-lmc

CHAPTER 11

ADVERSARY NO. 10-3019

**FIRST SUPPLEMENT TO THE FIRST AMENDED ANSWER AND COUNTERCLAIM
OF ALICIA ROJAS AND FRANCISCO JAYME**

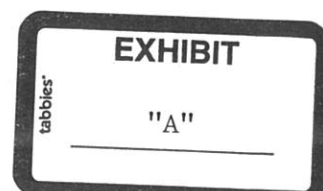
Come now, ALICIA ROJAS and FRANCISCO JAYME, Defendants and Counter-Claimants in the above-styled and numbered adversary proceeding, and file this their First Supplement to their First Amended Answer and Counterclaim, without waiving Defendant's previous First Amended Answer and Counterclaim filed in the above-captioned cause, and would respectfully show this Honorable Court as follows:

SUPPLEMENT TO COUNTERCLAIM

RESULTING TRUST

I.

The \$78,700.36 downpayment for the purchase by the Plaintiffs from the Defendants of the property located at 105 Thoroughbred Court, Santa Teresa, New Mexico (the “Property”), was paid by the Defendants. After the closing of the said “sale” of the Property from the Defendants to the Plaintiffs, the Defendants continued to occupy and to reside at the Property. Additionally, after the closing of the said



“sale” of the Property from the Defendants to the Plaintiffs, the Defendants continued to make the mortgage payment on the Property pursuant to a lease from the Plaintiffs, as landlord, to the Defendants, as tenant.

II.

Defendants therefore assert that Plaintiffs hold title to the Property in a resulting trust (or constructive trust) for the benefit of the Defendants. Defendants therefore request that the Court find the Defendants are beneficial owners of the Property, and that Plaintiffs hold title to the Property in a resulting trust (or constructive trust) for the benefit of Defendants.

WHEREFORE, PREMISES CONSIDERED, Defendants pray that the Court find that Plaintiffs hold title to the Property in a resulting trust for the benefit of Defendants, and that the Court find that Defendants are the owners of the Property, and that Defendants have such other and further relief to which they show themselves to be entitled.

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